

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

BAYARDO RENO SANDY,

Plaintiff(s),

v.

BANK OF AMERICA CORP., et al.,

Defendant(s).

Case No. 2:14-CV-1100 JCM (CWH)

ORDER

Presently before the court is a motion to expunge lis pendens filed by defendants Mortgage Electronic Registration Systems, Inc.; Select Portfolio Services, Inc.; and the Bank of New York Mellon f/k/a the Bank of New York, as trustee (collectively “defendants”). (Doc. # 32). *Pro se* plaintiff Bayardo Reno Sandy (hereinafter “plaintiff”) filed a response, (doc. # 34), and defendants filed a reply, (doc. # 35).

This is a mortgage foreclosure related case. On August 11, 2006, plaintiff borrowed \$241,600 from defendant Countrywide Home Loans, Inc. (“Countrywide”), pursuant to a promissory note and deed of trust against his property. Plaintiff failed to make certain required payments, and defendants attempted to foreclose on plaintiff’s property. Plaintiff then filed a complaint in the instant court, asserting claims including fraud, conspiracy, harassment, and quiet title. (Doc. # 1).

On July 7, 2014, plaintiff filed two lis pendens on the instant property. (Docs. # 2, 3). On October 20, 2014, defendants filed a motion to dismiss plaintiff’s complaint. (Doc. # 15). Plaintiff filed a response, (doc. # 18), and defendants filed a reply, (doc. # 24). On December 16, 2014, the court granted the motion to dismiss and directed the clerk to close the case. (Doc. # 25).

1 On January 13, 2015, plaintiff filed a notice of appeal. (Doc. # 27). On January 27, 2015,
2 defendants filed the instant motion to expunge lis pendens. (Doc. # 32).

3 Defendants argue that the lis pendens at issue should be expunged because, as this court
4 held in its order granting dismissal, plaintiff failed to state any viable claims in his complaint.
5 (Doc. # 32). In response, plaintiff contends that it is inappropriate to expunge the lis pendens on
6 his property because his appeal is pending. (Doc. # 34).

7 Nevada Revised Statute 14.010(2) states that “[a] notice of an action affecting real
8 property, which is pending in any United States District Court for the District of Nevada may be
9 recorded and indexed in the same manner and in the same place as provided with respect to actions
10 pending in courts of this state.” NRS 14.010(2).

11 A party recording a notice must establish that he is likely to prevail in the action or that he
12 has a fair chance of success on the merits. NRS 14.015(3)(b). The court must order cancellation
13 of the lis pendens upon finding that the party who recorded it has failed to meet the requirements
14 set forth in that section. NRS 14.015.

15 However, where a case has been appealed, the district court is generally divested of
16 jurisdiction over any aspects of the case involved in the appeal. *See Griggs v. Provident Consumer*
17 *Discount Co.*, 459 U.S. 56, 58 (1982); *see also Habon v. Mortg. Elec. Reg. Sys., Inc.*, No. 3:10-cv-
18 191-RCJ-VPC, 2012 WL 5944892, at *3 (D. Nev. Nov. 26, 2012) (denying, without prejudice,
19 motion to expunge lis pendens in similar case for lack of jurisdiction).

20 Plaintiff has appealed the court’s order dismissing plaintiff’s complaint under Federal Rule
21 of Civil Procedure 12(b)(6). Plaintiff’s complaint includes claims for quiet title and declaratory
22 relief, which are now on appeal. Accordingly, the court finds that it lacks jurisdiction to grant
23 defendants’ motion to expunge lis pendens. The lis pendens at issue affect disputed property rights
24 that, while resolved by this court, have not been conclusively determined on appeal.

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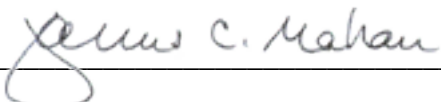
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1 Accordingly,

2 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants' motion to
3 expunge lis pendens, (doc. # 32), be, and the same hereby is, DENIED without prejudice for lack
4 of jurisdiction.

5 DATED April 3, 2015.

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7 
8 UNITED STATES DISTRICT JUDGE